

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAIME HERNANDEZ,

No. C 09-1845 WHA (PR)

Petitioner,

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

vs.

STATE OF CALIFORNIA,

Respondent.

Petitioner, a California prisoner currently incarcerated at, has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. He has paid the filing fee.

Venue is proper in this district because petitioner was convicted in Monterey County, which is in this district. *See* 28 U.S.C. 2241(d).

DISCUSSION

A. STANDARD OF REVIEW

A district court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief which are available to the petitioner ... and shall

1 set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of
2 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. “[N]otice’ pleading is not
3 sufficient, for the petition is expected to state facts that point to a ‘real possibility of
4 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
5 688, 689 (1st Cir. 1970). “Habeas petitions which appear on their face to be legally
6 insufficient are subject to summary dismissal.” *Calderon v. United States Dist. Court*
7 (*Nicolaus*), 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

8 **B. LEGAL CLAIMS**

9 A Monterey County jury convicted petitioner of three counts of murder and found true
10 the prosecution’s allegations that he committed the killings to assist a criminal street gang and
11 personally discharged a firearm. He was sentenced to prison for 180 years to life.

12 Petitioner’s first claim is that he was “[w]rongfully convicted.” In the facts section of
13 the form petition he says, as to this issue: “evidence not his,” which is incomprehensible, and
14 “[c]onvicted without any physical evidence,” which does not allege a constitutional violation,
15 there being no constitutional requirement that a conviction be supported by physical evidence.
16 This claim will be dismissed with leave to amend to state facts that point to a real possibility of
17 constitutional error.

18 For his second claim petitioner has written “[b]ias,” nothing more. In the facts section
19 for this claim he has written: “[d]ecision contrary to weight of evidence. Inappropriate
20 sentencing (Evidence not his).” The bias contention is unexplained – petitioner does not say
21 who he contends was biased nor does he provide any facts suggesting that any person, such as
22 the judge, or body, such as the jury, was biased. He also does not say what about the sentencing
23 was “inappropriate,” and whether a sentence was or was not appropriate is not a matter of
24 constitutional law. And once again the phrase “evidence not his” is unexplained. The only
25 contention in this claim that looks even slightly like a federal habeas claim is petitioner’s claim
26 that the verdict was “contrary to the weight of the evidence.” Even so it does not state a federal
27 claim for relief, although it may be that he is trying to claim that there was insufficient evidence
28 to support the verdict, a due process violation. *See Jackson v. Virginia*, 443 U.S. 307, 321

(1979). If that is his claim, he must say so in his amended petition. This claim also will be dismissed with leave to amend.

Petitioner labels his third claim “[a]mendment # 8,” and for the facts of the claim has written: “Excessive bail, fine or punishment shall not be required or impose[d]. (Tr[ia]l as an adult at age (16)).” As there is no indication that bail is an issue, or that a fine was imposed, it may be that this is a claim that the 180 year sentence was excessive, but if so petitioner must clearly say so. The reference to his being tried as an adult is unclear; if he is trying to assert a claim that trying him as an adult violated his constitutional rights, he must provide some facts that would point to a real possibility of constitutional error.

Because none of the claims is sufficient to proceed as presently drafted, the petition will be dismissed with leave to amend.

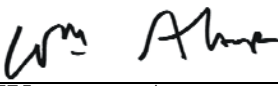
CONCLUSION

1. The petition is **DISMISSED** with leave to amend within thirty days from the date this order is entered. The amendment must be on the court’s form for prisoner section 2254 petitions and must include the caption and civil case number used in this order and the words AMENDED PETITION on the first page. Failure to amend within the designated time will result in the dismissal of these claims.

2. It is petitioner's responsibility to prosecute this case. Petitioner must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: June 24, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE